

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DONALD LAVERN WEBB,

Case No. 3:25-cv-00127-MMD-CSD

Petitioner,

ORDER

v.

BRAD POPE, *et al.*,

Respondents.

I. SUMMARY

This habeas matter is before the Court for initial review of Petitioner Donald Lavern Webb's *pro se* petition for writ of habeas corpus (ECF No. 1-1 ("Petition")) under the rules governing § 2254 cases.¹ The Court concludes that the Petition is subject to multiple substantial defects and summarily dismisses the Petition.

II. DISCUSSION

Under Habeas Rule 4, the assigned judge must examine the habeas petition and order a response unless it "plainly appears" that the petitioner is not entitled to relief. See *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019). The rule allows courts to screen and dismiss petitions that are patently frivolous, vague, conclusory, palpably incredible, false, or plagued by procedural defects. See *Boyd v. Thompson*, 147 F.3d 1124, 1128 (9th Cir. 1998).

A. Failure to Pay Filing Fee or File an IFP Application

Webb submitted the Petition, but he did not pay the \$5 filing fee or submit a complete *in forma pauperis* ("IFP") application. Under 28 U.S.C. § 1914(a) and the Judicial Conference Schedule of Fees, a \$5 filing fee is required to initiate a habeas action

¹All references to a "Habeas Rule" or the "Habeas Rules" in this order identify the rules governing § 2254 cases in the United States District Courts.

1 in a federal district court. The Court may authorize an indigent prisoner to begin a habeas
 2 action without paying the \$5 fee if he submits an IFP application on the approved form
 3 and includes three specific documents: (a) the prisoner's financial declaration and
 4 acknowledgement showing an inability to prepay fees and costs, (b) a financial certificate
 5 signed by the prisoner and an authorized prison official, and (c) a copy of the prisoner's
 6 account statement for the six-month period prior to filing. See 28 U.S.C. § 1915(a); LSR
 7 1-1, LSR 1-2.

8 **B. *Younger* Abstention**

9 The comity-based *Younger* abstention doctrine prevents federal courts from
 10 interfering with pending state court criminal proceedings by granting injunctive or
 11 declaratory relief, even if there is an allegation of a constitutional violation, unless there
 12 is an extraordinary circumstance that creates a threat of irreparable injury. *Younger v.*
 13 *Harris*, 401 U.S. 37, 53–54 (1971). The United States Supreme Court has instructed that
 14 "federal-court abstention is required" when there is "a parallel, pending state criminal
 15 proceeding." *Sprint Commc'nns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013); *Gilbertson v.*
 16 *Albright*, 381 F.3d 965 (9th Cir. 2004) (federal courts generally abstain from granting any
 17 relief that would interfere with pending state judicial proceedings). Injuries are irreparable
 18 only if the threat to a petitioner's federally protected rights cannot be eliminated through
 19 his defense of the criminal case. See *Younger*, 401 U.S. at 46.

20 *Younger* generally requires that federal courts refrain from enjoining or otherwise
 21 interfering with ongoing state criminal proceedings if three conditions are met: (1) state
 22 judicial proceedings are ongoing, (2) the state proceedings implicate important state
 23 interests, and (3) the plaintiff has the opportunity to raise his federal constitutional
 24 concerns in the ongoing proceedings. See *Middlesex County Ethics Comm. v. Garden*
 25 *State Bar Ass'n*, 457 U.S. 423, 432 (1982); *Dubinka v. Judges of Superior Ct. of State of*
 26 *Cal. for Cnty. of Los Angeles*, 23 F.3d 218, 223 (9th Cir. 1994).

27 The Court finds that the criteria for *Younger* abstention are met here. First, there
 28 is an ongoing state-court criminal prosecution against Webb in the Third Judicial District

1 Court for Clark County, Nevada. See *State of Nevada v. Webb*, Case No: 23-CR-1659.
2 Second, the state proceedings are judicial in nature and implicate important state
3 interests, namely administering the criminal justice system. See *Kelly v. Robinson*, 479
4 U.S. 36, 49 (1986) ("the States' interest in administering their criminal justice systems free
5 from federal interference is one of the most powerful of the considerations that should
6 influence a court considering equitable types of relief.").

7 In addition, there is no indication that Webb will be unable to raise his federal
8 constitutional concerns in the ongoing state proceedings. Webb's pretrial motion practice
9 or defenses at trial may eliminate any threat to his federally protected rights. Defendants
10 in state criminal proceedings routinely allege that state charges violate their constitutional
11 rights, including fundamental rights, which make this a regular occurrence, not an
12 extraordinary occurrence. Because he faces no extraordinary or irreparable injuries,
13 federal abstention is required at this time.

14 **C. Exhaustion**

15 Webb has not alleged or demonstrated that he properly and fully exhausted his
16 state court remedies. A state defendant seeking federal habeas relief must fully exhaust
17 his state court remedies before presenting his constitutional claims to the federal courts.
18 See, e.g., *Arevalo v. Hennessy*, 882 F.3d 763, 764-67 (9th Cir. 2018) (finding that
19 California petitioner properly exhausted his state remedies by filing two motions in the
20 trial court, a habeas petition in the court of appeal, and a habeas petition in the state
21 supreme court). The exhaustion requirement ensures that state courts, as a matter of
22 federal-state comity, will have the first opportunity to review and correct alleged violations
23 of federal constitutional guarantees. See *Coleman v. Thompson*, 501 U.S. 722, 731
24 (1991). To satisfy the exhaustion requirement, a claim must have been raised through
25 one complete round of either direct appeal or collateral proceedings to the highest state
26 court level of review available. See *O'Sullivan v. Boerckel*, 526 U.S. 838, 844-45 (1999);
27 *Peterson v. Lampert*, 319 F.3d 1153, 1156 (9th Cir. 2003) (en banc).

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1 Webb has not properly and fully exhausted his state court remedies because he
2 has not presented the claims alleged in his federal habeas petition to the state district
3 court, much less the Nevada appellate courts. Dismissal of Webb's Petition without
4 prejudice is appropriate on this basis alone.

5 **D. 28 U.S.C. § 1983 Claim**

6 Federal law provides two main avenues to relief for legal challenges to
7 incarceration: (1) a petition for writ habeas corpus, 28 U.S.C. §§ 2241, 2254, 2255; and
8 (2) a civil rights complaint, 28 U.S.C. § 1983. If success on a habeas claim would not
9 necessarily lead to a petitioner's immediate or earlier release from custody, the claim
10 does not fall within "the core of habeas corpus." *Nettles v. Grounds*, 830 F.3d 922, 931
11 (9th Cir. 2016). Such claims must be brought, if at all, under § 1983. If a prisoner is not
12 challenging the fact of his confinement, but instead the conditions under which he is being
13 held, he must file a civil rights complaint. See *id.* at 933 ("[P]risoners may not challenge
14 mere conditions of confinement in habeas corpus.") (citing *Crawford v. Bell*, 599 F.2d 890,
15 891-92 (9th Cir. 1979)).

16 In Ground 2, Webb asserts that he is the caregiver to his wife and that he has been
17 in medical segregation while he has been in custody. (ECF No. 1-1 at 5-6.) It appears
18 that his allegations are of the nature of prisoner civil rights claims. If he were to succeed
19 on this claim, it would only mean that his conditions of confinement would change. He
20 would not be released from custody any sooner. Because success on Webb's claim would
21 not lead to his immediate or speedier release, it does not fall in the "core" of habeas and
22 must be brought, if at all, in a civil rights complaint.

23 To the extent Webb is asserting a prisoner civil rights claim, the Court declines to
24 recharacterize Webb's petition as a civil rights complaint. When a habeas petition is
25 amenable to conversion on its face, federal courts may construe the petition to plead civil
26 rights claims. See *Nettles*, 830 F.3d at 935-36. However, habeas actions and prisoner
27 civil rights cases "differ in a variety of respects—that may make recharacterization
28 impossible or, if possible, disadvantageous to the prisoner compared to a dismissal

1 without prejudice of his petition for habeas corpus." *Id.* In this case, the petition is not
2 amenable to conversion on its face based on the differences between habeas and civil
3 rights cases and because it is not clear whether recharacterization would disadvantage
4 Webb. The Court therefore dismisses the petition without prejudice and instructs the Clerk
5 of the Court to send Webb the approved form and instructions for filing a 42 U.S.C. §
6 1983 complaint.

7 Accordingly, the Court denies the Petition and dismisses this action.

8 **III. CONCLUSION**

9 It is therefore ordered that Petitioner's petition for writ of habeas corpus (ECF No.
10 1-1) under 28 U.S.C. § 2254 is denied and this action is dismissed without prejudice.

11 It is further ordered that Petitioner is denied a certificate of appealability, as jurists
12 of reason would not find the Court's dismissal of the petition to be debatable or wrong.

13 The Clerk of Court is further directed to send Webb (1) a blank form IFP application
14 for incarcerated litigants along with instructions; (2) a copy of this order; and (3) the
15 approved form and instructions for filing a 42 U.S.C. § 1983 complaint.

16 The Clerk of Court is further directed to enter judgment accordingly and close this
17 case.

18 DATED THIS 4th Day of April 2025.



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20 MIRANDA M. DU
21 UNITED STATES DISTRICT JUDGE
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